

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

China Nuclear Industry Huaxing
Construction Co., Ltd.
No. 79 Yunlongshan Road
Jianyie District
Nanjing City, Jiangsu Province
People's Republic of China

11-BIS-0001

Respondent

ORDER RELATING TO
CHINA NUCLEAR INDUSTRY HUAXING CONSTRUCTION CO., LTD.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified China Nuclear Industry Huaxing Construction Co., Ltd., of Nanjing City, Jiangsu Province, People's Republic of China ("Huaxing"), that it has initiated an administrative proceeding against Huaxing pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),² through the issuance of a Charging Letter to Huaxing that, as amended ("Charging Letter"), alleges that Huaxing committed four violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violations occurred in 2006-2007. The Regulations governing the violations at issue are found in the 2006-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Charge 1 15 C.F.R. § 764.2(d): Conspiracy

Beginning in or about June 2006 and continuing through on or about March 2007, Huaxing conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of epoxy paint and epoxy paint thinner, items subject to the Regulations, from the United States to Pakistan, through China, for use in the Chashma Nuclear Power Plant No. II ("Chashma II") nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of the Pakistan Atomic Energy Commission ("PAEC"), an entity that is listed on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, without the required Department of Commerce license. The Chashma II nuclear plant was being constructed for PAEC by China Zhongyuan Engineering Corporation ("Zhongyuan"), the contractor, with the assistance of subcontractor Huaxing. The epoxy paint and thinner were designated as EAR 99 items and were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

In or around January 2006, Huaxing entered into an agreement with PPG Paints Trading (Shanghai) Co., Ltd. ("PPG Paints Trading") for the purchase of PPG epoxy paint and thinner for use in the Chashma II plant. At that time, Huaxing conspired to have the items transshipped to the Chashma II plant in Pakistan, via Hong Kong. That scheme was thwarted by actions taken by PPG Industries, Inc. ("PPG") on or about February 15, 2006, before the items left the United States.

On or about June 8, 2006, Huaxing learned that PPG's application for a U.S. export license to export the items directly to the PAEC's Chashma II plant had been denied. On or about June 15, 2006, Huaxing and PPG Paints Trading met to discuss the denial of the license and whether PPG Paints Trading would be able to supply Huaxing with the (U.S.-origin) PPG epoxy paint and thinner. During this meeting, Huaxing and PPG Paints Trading developed and agreed upon a new scheme under which PPG Paints Trading would supply the PPG epoxy paint and thinner to Huaxing for use in the PAEC facility despite the lack of a U.S. export license. Under this scheme, PPG Paints Trading would obtain the items from PPG, and a third-party Chinese distributor would be added to the transaction to facilitate the shipment to Pakistan. After the items arrived in China, they would be transshipped to Pakistan. This transaction structure was designed to avoid the shipment of the items directly from the United States to the PAEC's Chashma II facility in Pakistan and the U.S. license requirement for such an export. Thereafter, Huaxing took actions in furtherance of the conspiracy, including, inter alia, placing orders for the items with PPG Paints Trading under the name of or through a Chinese intermediary company and arranging for payment or reimbursement of any Chinese value added tax to facilitate the transshipment.

In so doing, Huaxing committed one violation of Section 764.2(d) of the Regulations.

Charges 2-3 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

On two occasions between on or about June 21, 2006, and on or about December 18, 2006, Huaxing ordered and bought items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered and bought epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in the Chashma II nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of the PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, with knowledge that a U.S. export license was required, but had not been obtained. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the project 5 times and had failed each time. In addition, Huaxing also knew that in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the PAEC facility, and in fact had been involved with the preparation of that application. Furthermore, on or about June 8, 2006, Huaxing learned that PPG's license application had been denied, and Huaxing discussed the license denial with PPG Paints Trading at a meeting on June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed two violations of Section 764.2(e) of the Regulations.

Charge 4 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

Between on or about October 23, 2006 and on or about March 20, 2007, Huaxing ordered items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in a nuclear power plant that was under construction in Pakistan and was a

subordinate entity under the ownership and control of PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing ordered the PPG epoxy paint and paint thinner from PPG Paints Trading through the use of an intermediary company in China. This transaction structure was devised in order to avoid U.S. licensing requirements and enable Huaxing to obtain and supply the PPG epoxy paint and thinner for use at the PAEC's Chashma II facility in Pakistan. Huaxing also, inter alia, directly or indirectly arranged for the items to be transhipped to the Chashma II plant in Pakistan after their arrival in China.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the Chashma II project 5 times and had failed each time. In addition, Huaxing also knew that, in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the Chashma II facility, and in fact had been involved with the preparation of that application. Furthermore, Huaxing learned on or about June 8, 2006, that PPG's license application had been denied, and discussed the license denial with PPG Paints Trading at a meeting on or about June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed one violation of Section 764.2(e) of the Regulations.

WHEREAS, BIS and Huaxing have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Huaxing shall be assessed a civil penalty in the amount of \$1,000,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Huaxing will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, Huaxing shall fully implement an internal export controls compliance program within 180 days of the date of this Order. Said program shall be in substantial compliance with the Export Management System (EMS) Guidelines, as applicable, which are available on the BIS website at

http://www.bis.doc.gov/complianceandenforcement/emcp_guidelines.pdf and shall include specific instructions on complying with U.S. export control laws. A copy of Huaxing's compliance program shall be transmitted to the Department of Commerce, Bureau of Industry and Security, Special Agent in Charge, New York Field Office, 1200 South Avenue, Suite 104, Staten Island, NY 10314 ("BIS New York Field Office").

FOURTH, Huaxing shall complete two external audits of its export controls compliance program. The results of both audits, including any relevant supporting materials, shall be submitted to the BIS New York Field Office. Huaxing shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct

the external audit of its compliance with U.S. export control laws (including recordkeeping requirements). The external audit shall cover the following transactions:

- (i) Exports, reexports, transshipments and in-country transfers made by or on behalf of Huaxing that are subject to the Regulations; and
- (ii) All exports, reexports, transshipments and in-country transfers by or on behalf of Huaxing involving an entity on the Entity List (as set forth in Supplement No. 4 to Part 744 (2012)) that are subject to the Regulations.

The first external audit shall cover the 12-month period from June 1, 2013 through May 31, 2014, and the related report shall be due to the BIS New York Field Office no later than August 31, 2014. The second external audit shall cover the second 12-month period from June 1, 2014 through May 31, 2015, and the related report shall be due to the BIS New York Field Office no later than August 31, 2015. Said audit shall be in substantial compliance with the EMS sample audit module, and shall include an assessment of Huaxing's compliance with the Regulations and the effectiveness of Huaxing's export controls compliance procedures and compliance with the Regulations. The EMS sample audit module is available on the BIS website at http://www.bis.doc.gov/complianceandenforcement/revise_emcp_audit.pdf. In addition, where said audit identifies actual or potential violations of the Regulations, Huaxing must promptly provide copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS New York Field Office.

FIFTH, that the full and timely payment of the civil penalty as set forth above, implementation of an export compliance program as set forth above, and completion and submission of external audits as set forth above, are hereby made conditions to the

granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Huaxing.

SIXTH, that for a period of five (5) years from the date of this Order, Huaxing, with a last known address of No. 79 Yunlongshan Road, Jianye District, Nanjing City, Jiangsu Province, People's Republic of China, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents (hereinafter collectively referred to as "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SEVENTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

EIGHTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the

conduct of trade or related services may also be made subject to the provisions of this Order.

NINTH, that, as authorized by Section 766.18(c) of the Regulations, the five-year denial period set forth above shall be suspended during a probationary period of five years under this Order, and shall thereafter be waived, provided that Huaxing has made full and timely payment of the civil penalty as set forth above, implemented an export compliance program as set forth above, completed and submitted the external audits as set forth above, and committed no other violation of the Act or the Regulations or any order, license or authorization issued thereunder. If Huaxing fails to comply with any of these probationary conditions, the suspension may be modified or revoked by BIS and a denial order including a five-year denial period activated against Huaxing.

TENTH, Huaxing shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Charging Letter or the Order. The foregoing does not affect Huaxing's testimonial obligations in any proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

ELEVENTH, that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 3 day of December 2012.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

China Nuclear Industry Huaxing
Construction Co., Ltd.
No. 79 Yunlongshan Road
Jianye District
Nanjing City, Jiangsu Province
People's Republic of China

11-BIS-0001

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between China Nuclear Industry Huaxing Construction Co., Ltd., of Nanjing City, Jiangsu Province, People’s Republic of China (“Huaxing”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(b) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

WHEREAS, BIS has initiated an administrative proceeding against Huaxing, pursuant to the Act and the Regulations;

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violations occurred in 2006-2007. The Regulations governing the violations at issue are found in the 2006-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

WHEREAS, BIS issued a Charging Letter to Huaxing that alleges that Huaxing committed four violations of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(d): Conspiracy

Beginning in or about June 2006 and continuing through on or about March 2007, Huaxing conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of epoxy paint and epoxy paint thinner, items subject to the Regulations, from the United States to Pakistan, through China, for use in the Chashma Nuclear Power Plant No. II (“Chashma II”) nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of the Pakistan Atomic Energy Commission (“PAEC”), an entity that is listed on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, without the required Department of Commerce license. The Chashma II nuclear plant was being constructed for PAEC by China Zhongyuan Engineering Corporation (“Zhongyuan”), the contractor, with the assistance of subcontractor Huaxing. The epoxy paint and thinner were designated as EAR 99 items and were certified as meeting industry standards for “Level 1” use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

In or around January 2006, Huaxing entered into an agreement with PPG Paints Trading (Shanghai) Co., Ltd. (“PPG Paints Trading”) for the purchase of PPG epoxy paint and thinner for use in the Chashma II plant. At that time, Huaxing conspired to have the items transshipped to the Chashma II plant in Pakistan, via Hong Kong. That scheme was thwarted by actions taken by PPG Industries, Inc. (“PPG”) on or about February 15, 2006, before the items left the United States.

On or about June 8, 2006, Huaxing learned that PPG’s application for a U.S. export license to export the items directly to the PAEC’s Chashma II plant had been denied. On or about June 15, 2006, Huaxing and PPG Paints Trading met to discuss the denial of the license and whether PPG Paints Trading would be able to supply Huaxing with the (U.S.-origin) PPG epoxy paint and thinner. During this meeting, Huaxing and PPG Paints Trading developed and agreed upon a new scheme under which PPG Paints Trading would supply the PPG epoxy paint and thinner to Huaxing for use in the PAEC facility despite the lack of a U.S. export license. Under this scheme, PPG Paints Trading would obtain the items from PPG, and a third-party Chinese distributor would be added to the transaction to facilitate the shipment to Pakistan. After the items arrived in China, they would be transshipped to Pakistan. This transaction structure was designed to avoid the shipment of the items directly from the United States to the PAEC’s Chashma II facility in Pakistan and the U.S. license requirement for such an export. Thereafter, Huaxing took actions in furtherance of the conspiracy, including, inter alia, placing orders for the items with PPG Paints Trading under the name of or through a Chinese intermediary

company and arranging for payment or reimbursement of any Chinese value added tax to facilitate the transshipment.

In so doing, Huaxing committed one violation of Section 764.2(d) of the Regulations.

Charges 2-3 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

On two occasions between on or about June 21, 2006, and on or about December 18, 2006, Huaxing ordered and bought items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered and bought epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in the Chashma II nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of the PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, with knowledge that a U.S. export license was required, but had not been obtained. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the project 5 times and had failed each time. In addition, Huaxing also knew that in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the PAEC facility, and in fact had been involved with the preparation of that application. Furthermore, on or about June 8, 2006, Huaxing learned that PPG's license application had been denied, and Huaxing discussed the license denial with PPG Paints Trading at a meeting on June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed two violations of Section 764.2(e) of the Regulations.

Charge 4 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

Between on or about October 23, 2006 and on or about March 20, 2007, Huaxing ordered items exported or to be exported from the United States with knowledge that a violation

of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in a nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing ordered the PPG epoxy paint and paint thinner from PPG Paints Trading through the use of an intermediary company in China. This transaction structure was devised in order to avoid U.S. licensing requirements and enable Huaxing to obtain and supply the PPG epoxy paint and thinner for use at the PAEC's Chashma II facility in Pakistan. Huaxing also, inter alia, directly or indirectly arranged for the items to be transshipped to the Chashma II plant in Pakistan after their arrival in China.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the Chashma II project 5 times and had failed each time. In addition, Huaxing also knew that, in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the Chashma II facility, and in fact had been involved with the preparation of that application. Furthermore, Huaxing learned on or about June 8, 2006, that PPG's license application had been denied, and discussed the license denial with PPG Paints Trading at a meeting on or about June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed one violation of Section 764.2(e) of the Regulations.

WHEREAS, Huaxing has reviewed the Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, Huaxing neither admits nor denies the allegations contained in the Charging Letter.

WHEREAS, Huaxing fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Huaxing enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, the Parties enter into this Agreement having taken into consideration a plea agreement entered by Huaxing in the U.S. District Court for the District of Columbia;

WHEREAS, Huaxing states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Huaxing wishes to settle and dispose of all matters alleged in the Charging Letter by entering into this Agreement; and

WHEREAS, Huaxing agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Huaxing, under the Regulations, in connection with the matters alleged in the Charging Letter.
2. The following sanctions shall be imposed against Huaxing in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Charging Letter:

a. Huaxing shall be assessed a civil penalty in the amount of \$1,000,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. Huaxing shall fully implement an internal export controls compliance program within 180 days of the date of the Order. Said program shall be in substantial compliance with the Export Management System (EMS) Guidelines, as applicable, which are available on the BIS website at http://www.bis.doc.gov/complianceand enforcement/emcp_guidelines.pdf and shall include specific instructions on complying with U.S. export control laws. A copy of Huaxing's compliance program shall be transmitted to the Department of Commerce, Bureau of Industry and Security, Special Agent in Charge, New York Field Office, 1200 South Avenue, Suite 104, Staten Island, NY 10314 ("BIS New York Field Office").

c. Huaxing shall complete two external audits of its export controls compliance program. The results of both audits, including any relevant supporting materials, shall be submitted to the BIS New York Field Office. Huaxing shall hire an unaffiliated third-party consultant with expertise in U.S. export control laws to conduct the external audit of its compliance with U.S. export control laws (including recordkeeping requirements). The external audit shall cover the following transactions:

- (i) Exports, reexports, transshipments and in-country transfers made by or on behalf of Huaxing that are subject to the Regulations; and

- (ii) All exports, reexports, transshipments and in-country transfers by or on behalf of Huaxing involving an entity on the Entity List (as set forth in Supplement No. 4 to Part 744 (2012)) that are subject to the Regulations.

The first external audit shall cover the 12-month period from June 1, 2013 through May 31, 2014, and the related report shall be due to the BIS New York Field Office no later than August 31, 2014. The second external audit shall cover the second 12-month period from June 1, 2014 through May 31, 2015, and the related report shall be due to the BIS New York Field Office no later than August 31, 2015. Said audit shall be in substantial compliance with the EMS sample audit module, and shall include an assessment of Huaxing's compliance with the Regulations and the effectiveness of Huaxing's export controls compliance procedures and compliance with the Regulations. The EMS sample audit module is available on the BIS website at http://www.bis.doc.gov/complianceand enforcement/revised_emcp_audit.pdf. In addition, where said audit identifies actual or potential violations of the Regulations, Huaxing must promptly provide copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS New York Field Office.

d. The full and timely payment of the civil penalty as set forth in Paragraph 2.a, implementation of an export compliance program as set forth in Paragraph 2.b, and completion and submission of the external audits as set forth in Paragraph 2.c, are hereby made conditions to the granting, restoration, or

continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Huaxing.

e. For a period of five (5) years from the date of the Order, Huaxing, with a last known address of No. 79 Yunlongshan Road, Jianye District, Nanjing City, Jiangsu Province, People's Republic of China, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents (hereinafter collectively referred to as "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- i. Applying for, obtaining, or using any license, License Exception, or export control document;
- ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

f. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the five-year denial period set forth in Paragraph 2.e shall be suspended during a probationary period of five years under the Order, and shall thereafter be waived, provided that Huaxing has made full and timely payment of the civil penalty as set forth in Paragraph 2.a, implemented an export compliance program as set forth in Paragraph 2.b, completed and submitted the external audits as set forth in Paragraph 2.c, and committed no other violation of the Act or the Regulations or any order, license or authorization issued thereunder. If Huaxing fails to comply with any of these probationary conditions, the suspension may be modified or revoked by BIS and a denial order including a five-year denial period activated against Huaxing.

4. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Huaxing hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Huaxing also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date Huaxing pays in full the civil penalty as set forth in Paragraph 2.a of

this Agreement, implemented an export compliance program as set forth in Paragraph 2.b, and completed and submitted the external audits as set forth in Paragraph 2.c.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, implementation of an export compliance program as set forth in Paragraph 2.b, and completion and submission of the external audits as set forth in Paragraph 2.c, BIS will not initiate any further administrative proceeding against Huaxing in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

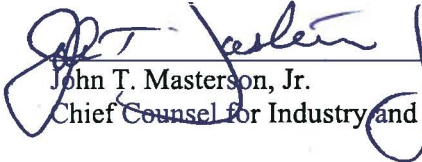
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Charging Letter, this Agreement, and the Order, if issued, available to the public.


10. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE

CHINA NUCLEAR INDUSTRY
HUAXING CONSTRUCTION CO., LTD.



John T. Masterson, Jr.
Chief Counsel for Industry and Security



Zhang Xiaoming
Director of Risk Control Department
China Nuclear Industry Huaxing
Construction Co., Ltd.

Date: Nov. 26, 2012

Date: 2012. 11. 16

Reviewed and approved by:



Daniel Waltz, Esq.
Patton Boggs LLP
Counsel for China Nuclear Industry
Huaxing Construction Co., Ltd.

Date: 11/26/12



DEC - 3 2012

CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

China Nuclear Industry Huaxing Construction Co., Ltd.
No. 79 Yunlongshan Road
Jianyie District
Nanjing City, Jiangsu Province
People's Republic of China

*Attention: Xiaoming Xu
Chairman of the Board*

Dear Mr. Xu:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that China Nuclear Industry Huaxing Construction Co., Ltd. ("Huaxing") of Nanjing City, Jiangsu Province, People's Republic of China ("China"), has committed four violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS alleges that Huaxing committed the following violations:

Charge 1 15 C.F.R. § 764.2(d): Conspiracy

Beginning in or about June 2006 and continuing through on or about March 2007, Huaxing conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of epoxy paint and epoxy paint thinner, items subject to the Regulations, from the United States to Pakistan, through China, for use in the Chashma Nuclear Power Plant No. II ("Chashma II") nuclear power plant that was under

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violations occurred in 2006-2007. The Regulations governing the violations at issue are found in the 2006-2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).



construction in Pakistan and was a subordinate entity under the ownership and control of the Pakistan Atomic Energy Commission (“PAEC”), an entity that is listed on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, without the required Department of Commerce license. The Chashma II nuclear plant was being constructed for PAEC by China Zhongyuan Engineering Corporation (“Zhongyuan”), the contractor, with the assistance of subcontractor Huaxing. The epoxy paint and thinner were designated as EAR 99 items and were certified as meeting industry standards for “Level 1” use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

In or around January 2006, Huaxing entered into an agreement with PPG Paints Trading (Shanghai) Co., Ltd. (“PPG Paints Trading”) for the purchase of PPG epoxy paint and thinner for use in the Chashma II plant. At that time, Huaxing conspired to have the items transshipped to the Chashma II plant in Pakistan, via Hong Kong. That scheme was thwarted by actions taken by PPG Industries, Inc. (“PPG”) on or about February 15, 2006, before the items left the United States.

On or about June 8, 2006, Huaxing learned that PPG’s application for a U.S. export license to export the items directly to the PAEC’s Chashma II plant had been denied. On or about June 15, 2006, Huaxing and PPG Paints Trading met to discuss the denial of the license and whether PPG Paints Trading would be able to supply Huaxing with the (U.S.-origin) PPG epoxy paint and thinner. During this meeting, Huaxing and PPG Paints Trading developed and agreed upon a new scheme under which PPG Paints Trading would supply the PPG epoxy paint and thinner to Huaxing for use in the PAEC facility despite the lack of a U.S. export license. Under this scheme, PPG Paints Trading would obtain the items from PPG, and a third-party Chinese distributor would be added to the transaction to facilitate the shipment to Pakistan. After the items arrived in China, they would be transshipped to Pakistan. This transaction structure was designed to avoid the shipment of the items directly from the United States to the PAEC’s Chashma II facility in Pakistan and the U.S. license requirement for such an export. Thereafter, Huaxing took actions in furtherance of the conspiracy, including, inter alia, placing orders for the items with PPG Paints Trading under the name of or through a Chinese intermediary company and arranging for payment or reimbursement of any Chinese value added tax to facilitate the transshipment.

In so doing, Huaxing committed one violation of Section 764.2(d) of the Regulations.

Charges 2-3 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

On two occasions between on or about June 21, 2006, and on or about December 18, 2006, Huaxing ordered and bought items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered and

bought epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in the Chashma II nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of the PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, with knowledge that a U.S. export license was required, but had not been obtained. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the project 5 times and had failed each time. In addition, Huaxing also knew that in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the PAEC facility, and in fact had been involved with the preparation of that application. Furthermore, on or about June 8, 2006, Huaxing learned that PPG's license application had been denied, and Huaxing discussed the license denial with PPG Paints Trading at a meeting on June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed two violations of Section 764.2(e) of the Regulations.

Charge 4 15 C.F.R. § 764.2(e): Acting with Knowledge of a Violation

Between on or about October 23, 2006 and on or about March 20, 2007, Huaxing ordered items exported or to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the items. Specifically, Huaxing ordered epoxy paint and epoxy paint thinner, items subject to the Regulations and designated as EAR 99 items, for export from the United States for use in a nuclear power plant that was under construction in Pakistan and was a subordinate entity under the ownership and control of PAEC, an entity that is listed on BIS's Entity List set forth in Supplement No. 4 to Part 744 of the Regulations. The Chashma II nuclear plant was being constructed for PAEC by Zhongyuan with the assistance of subcontractor Huaxing. The epoxy paint and thinner were certified as meeting industry standards for "Level 1" use in a nuclear reactor and core. Pursuant to Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, a Department of

Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

Huaxing ordered the PPG epoxy paint and paint thinner from PPG Paints Trading through the use of an intermediary company in China. This transaction structure was devised in order to avoid U.S. licensing requirements and enable Huaxing to obtain and supply the PPG epoxy paint and thinner for use at the PAEC's Chashma II facility in Pakistan. Huaxing also, inter alia, directly or indirectly arranged for the items to be transshipped to the Chashma II plant in Pakistan after their arrival in China.

Huaxing knew that a license was required for the items to be exported from the United States for use at the PAEC facility because, inter alia, Huaxing had informed PPG Paints Trading by fax on January 16, 2006, that a U.S. export license had been sought for the export of similar items for the Chashma II project 5 times and had failed each time. In addition, Huaxing also knew that, in January 2006, PPG had filed a license application with the U.S. Government seeking authorization for the export of the items to Pakistan for use at the Chashma II facility, and in fact had been involved with the preparation of that application. Furthermore, Huaxing learned on or about June 8, 2006, that PPG's license application had been denied, and discussed the license denial with PPG Paints Trading at a meeting on or about June 15, 2006. Along with PPG Paints Trading, Huaxing then developed and implemented a scheme to avoid the license requirement by structuring the transaction so that it would appear to be an export to China, when, in fact, the items were being exported to Pakistan, via China, for use at the Chashma II plant. At all times relevant hereto, Huaxing knew that the required license had not been obtained to export the items to the PAEC's Chashma II facility in Pakistan.

In so doing, Huaxing committed one violation of Section 764.2(e) of the Regulations.

* * * * *

Accordingly, Huaxing is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions and any other liability sanction or penalty available under law, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

³ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

If Huaxing fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Huaxing defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Huaxing. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Huaxing is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Huaxing is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Huaxing have a proposal to settle this case, Huaxing should transmit it to the attorney representing BIS named below.

Huaxing is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Huaxing may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Huaxing's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

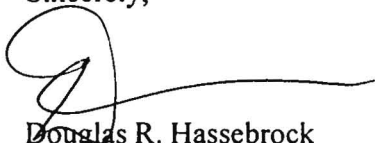
In addition, a copy of Huaxing's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: R. Elizabeth Abraham, Esq.
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

China Nuclear Industry Huaxing Construction Co. Ltd.
Charging Letter
Page 6 of 6

R. Elizabeth Abraham is the attorney representing BIS in this case; any communications that Huaxing may wish to have concerning this matter should occur through her. Ms. Abraham may be contacted by telephone at (202) 482-5301.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Hassebrock', with a long horizontal flourish extending to the right.

Douglas R. Hassebrock
Director
Office of Export Enforcement